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Attorneys for William Persichetti

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

<p>William Persichetti</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Patenaude & Felix, APC; Dell Financial Services, LLC</p> <p style="text-align: center;">Defendants.</p>	<p>Case No: '12CV1158 L WMc</p> <p>Complaint For Damages</p> <p>Jury Trial Demanded</p>
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INTRODUCTION

- The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter “FDCPA”), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt

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Riverside, California

1 collection practices are not competitively disadvantaged, and to promote
2 consistent State action to protect consumers against debt collection abuses.

3 2. The California legislature has determined that the banking and credit system
4 and grantors of credit to consumers are dependent upon the collection of just
5 and owing debts and that unfair or deceptive collection practices undermine
6 the public confidence that is essential to the continued functioning of the
7 banking and credit system and sound extensions of credit to consumers. The
8 Legislature has further determined that there is a need to ensure that debt
9 collectors exercise this responsibility with fairness, honesty and due regard
10 for the debtor's rights and that debt collectors must be prohibited from
11 engaging in unfair or deceptive acts or practices.

12 3. William Persichetti, ("Plaintiff"), through Plaintiff's attorneys, brings this
13 action to challenge the actions of Patenaude & Felix, APC ("P&F"); Dell
14 Financial Services, LLC ("Dell"), (collectively "Defendants"), with regard to
15 attempts by Defendants to unlawfully and abusively collect a debt allegedly
16 owed by Plaintiff, and this conduct caused Plaintiff damages.

17 4. Plaintiff makes these allegations on information and belief, with the exception
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
19 Plaintiff alleges on personal knowledge.

20 5. While many violations are described below with specificity, this Complaint
21 alleges violations of the statutes cited in their entirety.

22 6. Unless otherwise stated, all the conduct engaged in by Defendants took place
23 in California.

24 7. Any violations by Defendants were knowing, willful, and intentional, and
25 Defendants did not maintain procedures reasonably adapted to avoid any such
26 violation.

27 8. Defendant P&F, is, and at all relevant times was, an employee or agent of
28 Defendant Dell acting within the course and scope of its employment, and

1 there was a causal nexus between Defendant P&F's acts and its
2 employment. Consequently, any subsequent illegal actions by Defendant
3 P&F were the responsibility of Defendant Dell, vicariously, under the
4 doctrine of Respondeat Superior, or other vicarious liability theories, and
5 Defendant Dell is liable for those acts.

6 9. Further, any and all violations alleged against Defendant P&F are imputed to
7 Defendant Dell under the theory of vicarious liability, because the actions
8 undertaken by Defendant P&F were an attempt to collect the alleged debt by
9 an attorney's office on behalf of Defendant Dell.

10 10. All violations alleged under the FDCPA are alleged against Defendant P&F
11 only.

12 11. All violations alleged under the Rosenthal Act are alleged as to all named
13 Defendants.

14 JURISDICTION AND VENUE

15 12. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
16 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

17 13. This action arises out of Defendants' violations of the Fair Debt Collection
18 Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair
19 Debt Collection Practices Act, California Civil Code §§ 1788-1788.32
20 ("Rosenthal Act").

21 14. Because Defendants do business within the State of California, personal
22 jurisdiction is established.

23 15. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c).

24 16. Defendants commonly conduct business in San Diego County and are subject
25 to personal jurisdiction in San Diego County, therefore Defendants reside in
26 this judicial district pursuant to 28 U.S.C. § 1391(c).

27 17. At all times relevant, Defendants conducted business within the State of
28 California.

PARTIES

18. Plaintiff is a natural person who resides in the City of Murrieta, State of California.
19. Defendant P&F is located in the City of San Diego, in the State of California.
20. Defendant Dell is located in the City of Round Rock, in the State of Texas.
21. Plaintiff is obligated or allegedly obligated to pay a debt, and is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).
22. Defendants are persons who use an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and are therefore debt collectors as that phrase is defined by 15 U.S.C. § 1692a(6).
23. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a “debtor” as that term is defined by California Civil Code § 1788.2(h).
24. Defendants, in the ordinary course of business, regularly, on behalf of themselves, or others, engage in debt collection as that term is defined by California Civil Code § 1788.2(b), are therefore debt collectors as that term is defined by California Civil Code § 1788.2(c).
25. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

26. Sometime before April 19, 2011, Plaintiff is alleged to have incurred certain financial obligations to Dell.

27. These financial obligations were primarily for personal, family or household purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).

28. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a “debt” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).

29. Sometime thereafter, but before April 19, 2011, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to the validity of this alleged debt.

30. Subsequently, but before April 19, 2011, the alleged debt was assigned, placed, or otherwise transferred, to Defendant P&F for collection on behalf of its client, Dell.

31. On or about April 19, 2011, P&F, acting within the scope of its employment as Dell’s legal counsel, mailed a dunning letter to Plaintiff in an attempt to collect the alleged debt owed to Dell. A few days later, Plaintiff received that letter.

32. The April 19, 2011 letter was addressed to Plaintiff at his California residential address.

33. This communication to Plaintiff was a “communication” as that term is defined by 15 U.S.C. § 1692a(2), and an “initial communication” consistent with 15 U.S.C. § 1692g(a).

34. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b) defines that phrase, and an “initial communication” consistent with Cal. Civ. Code § 1812.700(b).

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1 35. Between the months of April 2011 and September 2011, Plaintiff received
2 multiple collection calls from Defendant P&F, acting within the scope of its
3 employment as Dell's legal counsel, attempting to collect the alleged debt
4 owed to Dell.

5 36. Several of the collection calls received from P&F were received in the early
6 morning hours, often before 6:00 a.m.

7 37. Between the months of April 2011 and September 2011 Plaintiff received
8 calls at approximately 6:00 a.m. on an average of four times per week.

9 38. Plaintiff maintains a cell phone that has a Georgia area code, however for all
10 times relevant, Plaintiff has been a resident of California.

11 39. During several collection calls placed by P&F, Plaintiff informed the caller
12 that he lives in California and requested that the early morning calls cease.

13 40. When verbally informed that Plaintiff is a California resident, P&F's
14 representatives informed Plaintiff that it was of no consequence because the
15 collection calls are placed by an automated dialer system which dials phone
16 numbers according to the time zone associated with the area code of the
17 phone number.

18 41. Since Plaintiff maintained a Georgia area code on his cell phone, P&F
19 informed Plaintiff that they could continue to call at any time that was
20 between 8:00 a.m. and 9:00 p.m. in the State of Georgia.

21 42. Without the prior consent of the consumer given directly to P&F or the
22 express permission of a court of competent jurisdiction, P&F communicated
23 with the consumer in connection with the collection of a debt at an unusual
24 time or place or a time or place known or which should be known to be
25 inconvenient to the consumer. Consequently, P&F violated 15 U.S.C. §
26 1692c(a)(1).

27 43. Because this violated certain portions of the federal Fair Debt Collection
28 Practices Act as these portions are incorporated by reference in the Rosenthal

1 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
2 this conduct or omission violated Cal. Civ. Code § 1788.17.

3 44. Previously, on or about July 22, 2010, Plaintiff spoke with a Dell
4 representative and verbally requested that all collection calls regarding the
5 alleged debt cease.

6 45. On or about July 23, 2010 Dell placed a “cease and desist” on Plaintiff’s
7 account and agreed to cease all calls to Plaintiff regarding the alleged debt.

8 46. In or about July 2010 Plaintiff also sent a consumer complaint to the Attorney
9 General of Texas regarding the Dell’s collection activities related to the
10 alleged debt.

11 47. In response to Plaintiff’s consumer complaint, the Attorney General of Texas
12 sent an inquiry to Dell regarding Plaintiff’s consumer complaint.

13 48. On or about August 11, 2010, Dell sent a letter to the Attorney General of
14 Texas which stated “[p]lease allow this letter to serve as confirmation that no
15 further collection calls will be placed to Mr. Persichetti.”

16 49. When P&F, acting within the scope of its employment as Dell’s attorney,
17 resumed collection calls to Plaintiff in or about April 2011 and continuing
18 until September 2011, P&F caused a telephone to ring or engaged a person in
19 telephone conversations repeatedly or continuously with intent to annoy,
20 abuse, or harass any person at the called number. Consequently, P&F violated
21 15 U.S.C. § 1692d(5).

22 50. Because this violated certain portions of the federal Fair Debt Collection
23 Practices Act as these portions are incorporated by reference in the Rosenthal
24 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
25 this conduct or omission violated Cal. Civ. Code § 1788.17.

26 51. Furthermore, Dell’s agreement to cease and desist all collection calls to
27 Plaintiff constituted a false, deceptive, or misleading representation or means
28 in connection with the collection of a debt because Dell subsequently hired

P&F to continue collection action on Plaintiff's account, to include the placement of collection calls, contradicting Dell's prior agreement on which Plaintiff had relied. Consequently, Dell violated 15 U.S.C. § 1692e and 15 U.S.C. § 1692e(10).

52. Because this violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

CAUSES OF ACTION

COUNT I

AS TO DEFENDANT P&F

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

15 U.S.C. §§ 1692 ET SEQ.

53. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

54. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

55. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from each and every defendant, jointly and severally.

COUNT II

AS TO ALL NAMED DEFENDANTS

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)

CAL. CIV. CODE §§ 1788-1788.32

56. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

57. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32

58. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from each and every defendant, jointly and severally.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant P&F, and Plaintiff be awarded damages from Defendant P&F, as follows:

- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

WHEREFORE, Plaintiff prays that judgment be entered against Defendant Dell, and Plaintiff be awarded damages from Defendant Dell, as follows:

- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

1 59. Pursuant to the seventh amendment to the Constitution of the United States of
2 America, Plaintiff is entitled to, and demands, a trial by jury.

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4 Respectfully submitted,

Hyde & Swigart

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7 Date: May 11, 2012

By: s/ Andrea Darrow Smith
Andrea Darrow Smith
Attorneys for Plaintiff

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HYDE & SWIGART
Riverside, California

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

William Persichetti

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart 4129 Main Street, Suite B8 Riverside, CA 92501
(951) 784-7770

DEFENDANTS

Patenaude & Felix, APC; Dell Financial Services, LLC

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

'12CV1158 L WMc**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1692 et seq.

Brief description of cause:
Unfair Debt Collection Practices

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**
75,001.00+

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

05/11/2012

s/Andrea Darrow Smith

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____